

# EXHIBIT 5



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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THERESA WEIRBACH and CHARLES  
ZIMMER, on behalf of themselves  
and all others similarly situated,

Plaintiff,

v.

THE CELLULAR CONNECTION, LLC,

Defendant.

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CIVIL ACTION

Case No. 5:19-CV-05310-JWD

**DECLARATION OF ROBIN FAHEY**

I, Robin Fahey, declare as follows:

1. I am over the age of 18, and I am competent to give this Declaration. I have personal knowledge of the facts below.
2. I am a resident of Dickson City, PA. I have been employed by The Cellular Connection, LLC ("TCC") as a Regional Director for just over two years. Prior to this role, I held the positions of Store Manager, Market Manager and Sales Manager at various times during my employment with TCC. As a Store Manager, I was responsible for scheduling, rolling out company initiatives, team meetings, one on ones, inventory management, coaching, etc. As a Market Manager, I was responsible for manager one on ones, coaching, identifying business needs based on area and acting on it, staffing, recruiting, etc. As a Sales Manager, I was responsible for scheduling, rolling out company initiatives, team meetings, one on ones, inventory management, coaching, etc. I have been working for TCC for the past 8.5 years.



3. I am providing this Declaration to respond to assertions that I understand Theresa Weirbach and others made in the above-captioned case. I have not been deposed in this lawsuit, and I do not intend this Declaration to be a comprehensive statement of my experiences with Ms. Weirbach, other allegedly similarly situated individuals, or TCC.

4. As a Regional Director, I oversee more than 19 TCC store locations across northeast Pennsylvania through New Jersey. I am responsible for overseeing sales and operations of these stores.

5. TCC's stores currently are organized into geographical districts, which are headed by District Managers, and each district is part of an assigned geographical region, which is headed by a Regional Director, like myself.

6. During the past several years, there have been numerous restructurings, so the number of districts and regions, the assignment of specific stores to corresponding districts and regions, and the management structure at all levels all have varied and changed throughout this time period.

7. For example, from 2014 to 2016, TCC used to employ a Market Manager who was responsible for 4-7 Stores. I served in this role from late 2014 to late 2016. This position does not exist anymore and the duties handled by a Market Manager are now handled by Store Managers or District Managers, depending on the store, district, or region.

8. I am very familiar with all responsibilities TCC places on its Sales Consultants and Technical Advisors (collectively, "Sales Reps").

9. A Sales Rep's primary responsibility is to sell Verizon Wireless data plans and cellular phones and accessories to customers to meet their sales targets, while working in their assigned store.



10. Sales Reps are also expected to: make calls to existing TCC and Verizon Wireless customers to drive customer traffic in the store; merchandise and maintain store cleanliness for overall appearance and customer experience; check internal resources for the latest communication and promotions during working hours; and ensure accuracy of timecard and hours worked.

11. TCC does not demand any off-the-clock work be performed by Sales Reps. To the contrary, TCC has a company policy stating that "off-the-clock work is strictly prohibited."

12. TCC does not have any policy requiring that any of its employees use any group messaging application.

13. Although group messaging applications often are used, Sales Reps were not and are not required to use GroupMe or any other group messaging application.

14. Whether stores use a group messaging application or not is in the sole discretion of District Managers, or individual Store Managers (if they have a Store Manager). Whether my direct reports use a group messaging application is in my sole discretion.

15. As such, not only is whether a particular store uses a group messaging application different from store-to-store, which application is used (*e.g.*, GroupMe, Microsoft Teams, Slack), how frequently the application is used and for what purpose the application is used varies from store-to-store.

16. In my region, for example, these applications are used to recognize and celebrate certain individuals for sales, to encourage Sales Reps to make use of new product/service promotions, and to provide contest updates. I sometimes use a group messaging application to communicate with my Store Managers and District Managers as a group. I do include hourly employees, like Sales Reps, on these group communications



17. In my region, some Sales Reps are heavily motivated and use the application

regularly at work, while other mute the application and do not use it at all. Most, if not all,

activity on any group messaging application occurs when the stores are open and when Sales

Reps are in the stores. After store hours, there is little-to-no activity on group messaging

applications.

18. There are no consequences for Sales Reps who choose not to use the applications.

Whether stores use a group messaging application is in the sole discretion of Regional Directors,

District Managers, or individual Store Managers.

19. TCC does not require Sales Reps to use group messaging applications outside of

their clock-in/out times.

20. Sales Reps have no need to use group messaging applications outside of their

clock-in/out times because there is no actual work that was, is, or can be performed using the

application when not physically located at the store.

21. Sales Reps do not have access to any company sales or customer information

while they are not in stores, so they are unable to perform any meaningful work-related tasks

when they are outside of the store. They cannot access sales reports or customer information to

follow-up on sales or create customer satisfaction during the customer complaint process when

they are not in the store.

22. I cannot think of any reason why a Sales Rep would work off-the-clock when the

Sales Rep is not in the store.

23. TCC has numerous policies related to timekeeping which show that TCC does

pay, and has a good faith and bona fide desire to pay, for all time worked and to correct any

timekeeping errors that arise. I regularly review Sales Reps' time records to ensure their time is

adjusted for when the Sales Reps forget to clock-in or clock-out at the beginning or the end of their shifts.

24. If a Sales Rep is required to attend an off-site event, like a meeting, picnic, or celebration dinner, I ensure their time is adjusted so that they are compensated for their attendance.

25. If a Sales Rep is asked to come in for a shift early, receive training from a vendor outside the store, or, on the rare occasion, call in for a meeting while at home, I ensure their time is adjusted so that they are compensated for these activities.

26. Ensuring that Sales Reps are paid for all hours worked is a top priority of mine. I regularly review time record adjustments made by my direct reports (Store Managers and District Managers) so that the relevant hours worked are properly reported by all Sales Reps.

27. TCC regions, districts, and stores maintain substantial autonomy. Each region, district, and store has the authority to decide whether to have regularly scheduled calls or meetings; there is no common practice for all regions, districts, and stores to conduct regularly scheduled conference calls or meetings. Because of this, and because of the turnover of individual Store Managers, TCC gives considerable discretion to each Store Manager, District Manager, and Regional Director to set their own schedule for conference calls or meetings.

28. This autonomy and turnover means that it is impossible to say that each Sales Rep employed in 2017 or at any time thereafter would have been required to attend a particular, regularly-scheduled call or meeting. These calls and meetings would have varied by each region,

adjusted for when the Sales Reps forget to clock-in or clock-out at the beginning or the end of their shifts.

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28. This autonomy and turnover means that it is impossible to say that each Sales Rep employed in 2017 or at any time thereafter would have been required to attend a particular, regularly-scheduled call or meeting. These calls and meetings would have varied by each region, district, and store throughout the relevant time period.

29. For example, I have a monthly call with the employees in my region, and I make it clear that all employees attending the call need to be clocked in. I reiterate to my Store

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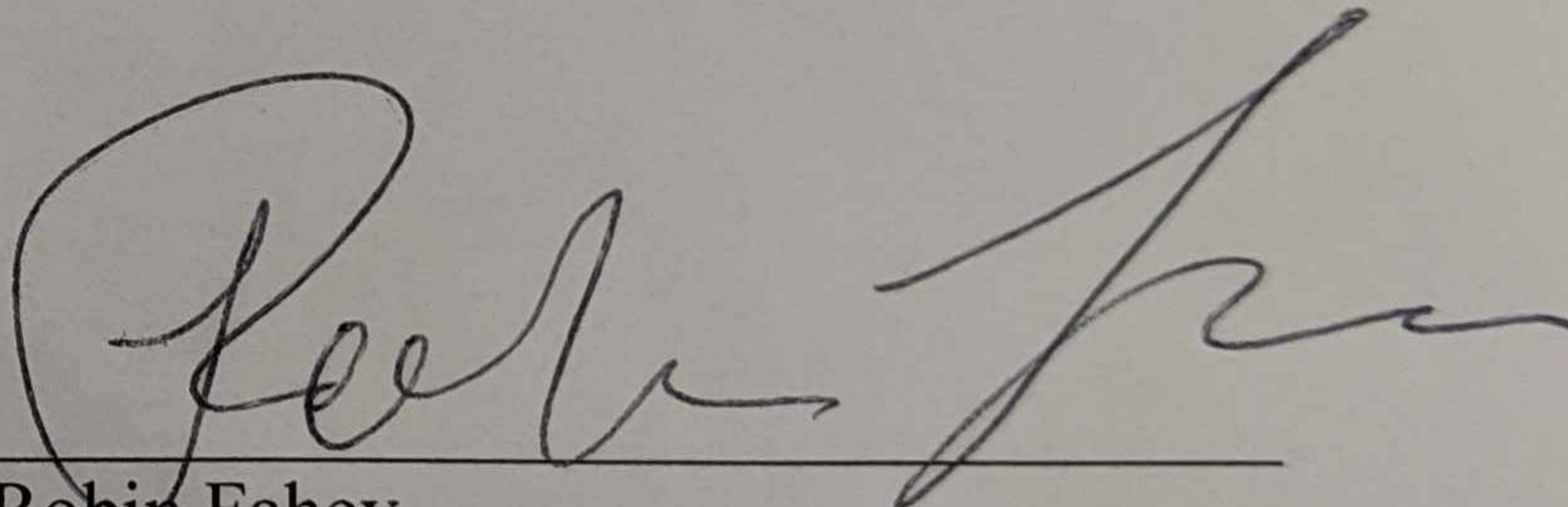
Managers and District Managers that they need to make sure that all hourly employees, like Sales Reps, are clocked in for their attendance on these calls.

30. The nature, frequency, and length that each region, district, and store holds meetings and conference calls varies. My monthly calls do not occur on a fixed date every month; the date changes from month-to-month.

31. Generally, it is extremely rare for any Sales Reps to take these conference calls from outside the store because the Sales Reps are usually at the store and the meetings are conducted during store hours.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2020, at East Greenville, PA



Robin Fahey

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